

NBB TERMS AND CONDITIONS, WHEN ACTING AS CCB AND AS ASSISTING NCB FOR CREDIT CLAIMS

Terms & Conditions of “National Bank of Belgium”, when acting as CCB

Credit claims which are governed by a law other than the national law of the home central bank (i.e. the central bank of the country where the counterparty is located, i.e. the NCB providing the credit) can be used cross-border (i.e. in credit operations with the respective HCB) via the CCBM. The national central bank of the country whose law governs the credit claim acts as CCB.

The following provisions apply when National bank of Belgium acts as CCB. They are to be read in conjunction with the CCBM User Requirements which contain the legal and operational provisions which apply insofar as the current terms and conditions do not contain any deviating provisions.

Eurosystem counterparties that wish to use, as collateral with other Eurosystem NCBs, credit claims governed by Belgian law have to comply with the following provisions, which complement the terms and conditions currently applicable between counterparties and their respective home central bank.

When the involved HCB provides interface services between its counterparties and the CCB, the HCB instead of the counterparty has to comply with the operational requirements presented in section 2 below.

1. Legal requirements

The following legal requirements have to be taken into account by HCB's when receiving as collateral a credit claim governed by Belgian law, whereby the National Bank of Belgium acts as CCB and to the extent to which, based upon private international law rules, CCB law has to be applied.

- (a) The legal technique used for the creation of a security interest is pledge. Under Belgian law, pledgor and pledgee establish a valid and opposable security over the credit claim by their mere consensus (it being understood that the pledge will only be opposable towards the debtor of the pledged claim after notification). Dispossession of the pledged goods is required for the validity of a pledge. The Belgian law however foresees a "silent" pledge of claims, whereby the pledgee takes possession of the claims by the mere entering into the pledge agreement (fictitious dispossession).

Nevertheless, lack of ex ante notification might endanger the position of the collateral taker. In case the pledgee does not notify the pledge to the debtor of the bank loan, legal risks (subsequent mobilisation of the same bank loan with priority granted to the pledgee who notifies first, payment to the original or to a third creditor, set-off or pledge of non-existing bank loans) could endanger the position and the priority of the collateral taker.

- (b) Therefore, when the National Bank of Belgium plays the role of HCB, registration is required, in compliance with the national conflict of law rules which refer to the law of the country where the pledgor is located, i.e. Belgian law. The Belgian register for pledged credit claims is pledgee-based, meaning that its sole function is to register pledges of credit claims made in favour of the NBB.
- (c) Acting as CCB, and mobilising credit claims in favour of the HCB, the NBB cannot use the register. In that case, no alternative system has been foreseen and the NBB will have to carry out ex ante notification. Notification has to be performed, upon receipt of the mobilisation request, by the National Bank of Belgium by registered mail or telefax message with accusation of receipt.
- (d) The credit claim agreement needs to comply with the eligibility criteria set out in article 6.2.2 and in Annex 7 of the General Documentation.
- (e) The following other requirements need to be fulfilled for the purpose of creating valid and enforceable security interest over the credit claim:
- the pledgor is duly incorporated and validly existing under the laws governing it and has full legal capacity to enter into the pledge agreement and to perform the obligations contained therein;
 - the execution and performance of the pledge agreement (i) do not and will not violate any provision of any applicable law or regulation or of any order or judgement of any court, (ii) do not and will not violate the articles of association of the pledgor, (iii) do not and will not conflict with any agreement or instrument binding upon it or any of its assets, and (iv) are fully compatible with and serve the pledgor's corporate interest;
 - the execution and performance of the pledge agreement has been duly authorised by any competent body of the pledgor.
- (f) The National Bank of Belgium explicitly reserves the right to collect all useful information relating to the pledged claims, at the moment of the mobilisation, during the mobilisation and in any case at the moment of enforcement of the pledge. The pledgor shall provide the National Bank of Belgium with a copy of the contracts underlying the pledged claims or shall instruct any third party to provide the NBB with all information relating to the pledged claims at the National Bank of Belgium's simple request.

- (g) The pledgee receives, on the expiration dates, the interest and capital amounts of the pledged claims and offsets them against the amount of its claim towards the pledgor. The proceeds will be collected by the HCB, since the ex ante notification letter sent by the National Bank of Belgium will contain a payment instruction to the debtor in this regard, unless the HCB explicitly requests the National Bank of Belgium to indicate in the notification letter that the amounts will be collected by the pledgor on behalf of the HCB.
- (h) In case of counterparty default, the National Bank of Belgium shall enforce the pledge, after having sent a prior notification to the counterparty, which contains a final notice to reimburse its debts. The president of the Court of Commerce will then be requested to grant authorization to have the collateral sold, and to designate the person charged with this sale. In some cases, the court would order a public auction.

The president will take its decision only on the third day after the day of the serving of the request upon the counterparty, thus enabling the latter to provide the president with his remarks. The court decision shall then be served upon the counterparty, who disposes of a three days period for filing an appeal by summoning the pledgee before the Court of Commerce. When the Court of Commerce has passed its judgement, parties dispose of a period of eight days as of the serving of the judgment, for launching appeal. Nevertheless, the decision and the judgement may be executed immediately, regardless of a possible appeal.

- (i) The Belgian insolvency legislation prevents individual creditors from enforcing their collateral in the event of insolvency of the collateral provider. Under Belgian insolvency rules, a collateral arrangement could be either void by operation of the law or, else, subject to challenge before the courts, if concluded during the suspect period or on the day of opening of insolvency proceedings but before the actual opening ("after zero hour"). The moment at which a party is deemed to be bankrupt is the moment of cessation of payments. However, if it can be corroborated on the basis of objective elements that the bankruptcy occurred earlier, the court may fix the moment of bankruptcy at an earlier date which may be a maximum of six months before the bankruptcy order. The period between such date and the bankruptcy order is commonly called the "suspect period".

In a judicial composition, the pledgee's rights will be unenforceable until the rejection of the request for it by the court or until the end of the suspension period as decided by the court; in a bankruptcy, they will be unenforceable until the moment the process of verification of the claims is closed.

2. Operational requirements

- (a) The counterparty has to submit to the CCB a list of authorised signatures according to the following procedure: at the moment of the contact in order to get from the National Bank of Belgium the counterparty code which will be a part of the credit claim identification code, the list of authorised signatures can be sent by e-mail (backoffice@nbb.be) or fax (+ 32 2 221 3080).
- (b) The counterparty has to indicate to the CCB the ECAF sources/system.
- (c) To use credit claim cross-border, the counterparty has to send the information listed below to the National Bank of Belgium according to the template/format message Swift MT598, subtype 511 presented upon www.nbb.be / products and services / ESCB information / information of NBB, file "Annex 1 : credit claim static data" to the main terms and conditions ("Règlement des crédits intrajournaliers et des opérations de politique monétaire de la BNB / Reglement betreffende intraday-kredietverlening en monetaire-beleidsoperaties"), this annex showing also the list of loan details.

The template/format message has to be sent via SWIFT by 4:30 pm (cut-off time).

The loan agreement is to be delivered at request of the National Bank of Belgium. In such a case, the loan agreement has to be sent by fax (+ 32 2 221 3080) / mail to (backoffice@nbb.be).

- (d) Each credit claim and debtor/guarantor has to be assigned a standard identification number.

Identification code for credit claim

For credit claims under Belgian law (debtors in Belgium): NBB rules apply (counterpart in Belgium or elsewhere)

- example : BE 1234 12345678 9
 - BE: legal regime of the loan (same as debtor)
 - 1234: counterpart numerical code in NBB CCMS. This four digits code has first to be granted by NBB acting as CCB.
 - 12345678: counterpart internal code (freely determined but unique)
 - 9: check digit resulting from ad hoc algorithm (see hereafter)

Identification code for debtor / guarantor

For debtor/guarantor located in Belgium : NBB rules apply (counterpart in Belgium or elsewhere)

- example : BE 0123456789 XX #
 - BE: legal regime of the debtor (same as loan)
 - 0123456789: numerical positions of the debtor undertaking number (ex- VAT number)
 - XX: freely filled in
 - # : check digit resulting from ad hoc algorithm (see hereafter)

- (e) Credit claims will be accepted once their eligibility has been checked and notification has been performed upon receipt of the mobilisation request, by the National Bank of Belgium.

- (f) Once successfully recorded in the database of the National Bank of Belgium as a CCB, the counterparty will receive a confirmation (see Swift MT598 subtype 512 presented upon [www.nbb.be / products and services / ESCB information / information of NBB](http://www.nbb.be/products_and_services/ESCB_information/information_of_NBB), file "Annex 1 : credit claim static data") after which the mobilisation request can be sent by the counterparty to the HCB.

- (g) Counterparties have to promptly communicate to the CCB any change which affects the eligibility and valuation of the claim. This updated can be done by sending the template/format message Swift MT598, subtype 511 presented upon [www.nbb.be / products and services / ESCB information / information of NBB](http://www.nbb.be/products_and_services/ESCB_information/information_of_NBB), file "Annex 1 : credit claim static data" to the main terms and conditions ("Règlement des crédits intrajournaliers et des opérations de politique monétaire de la BNB / Reglement betreffende intraday-kredietverlening en monetaire-beleidsoperaties") with the concerned updated fields.

- (h) A daily statement of holding is sent by National Bank of Belgium as a CCB to the attention of the HCB (similarly to the current situation for collateral being made up from securities, and in compliance with the CCBM user requirements).

- (i) In case of withdrawal of claims, the counterparty must instruct its HCB which will in turn instruct the CCB.

Terms & Conditions of “National Bank of Belgium”, when acting as Assisting NCB

The following provisions apply when National Bank of Belgium acts as Assisting NCB, i.e. when debtor/guarantor is located in Belgium, but the credit claims are governed by the law of another country.

These provisions complement the terms and conditions currently applicable between counterparties and their respective home central bank.

The National Bank of Belgium acting as an assisting NCB, will provide assistance to the concerned HCB for the sake of confirming the existence of the debtor / guarantor.

If, based upon the private international law rules of the HCB, the law of the country where the debtor is located would apply to the opposability of the pledge or to the relationship with the debtor, the notification requirement as set out under 1.(a) and (c) will have to be carried out.

Ad hoc algorithm to be used to determine the check digit of (a) the credit claim identification code, as well as (b) the debtor / guarantor identification code

Box 1: Components and calculation of the standard identification number

- The ISO code of the country of the credit claim (2 digits)
- The national identification number used by the relevant NCB (12 digits)
- A control key (1 digit)

Box 2: Formula for computing modulus 10 "double-add-double" check-digit¹

The following steps are involved in this calculation:

Step 1: Convert the alphabetic characters contained in the code in numeric values, attributing to each character the corresponding value indicated in the Table I below.

Step 2: Double the value of alternate digits beginning with the first right-hand digit (low order).

Step 3: Add the individual digits comprising the products obtained in step 1 to each of the unaffected digits in the original number.

Step 4: Subtract the total obtained in step 2 from the next higher number ending in 0 [this is the equivalent of calculating the "tens complement" of the low order digit (unit digit) of the total].

If the total obtained in step 2 is a number ending in zero (30, 40 etc.), the check digit is 0.

Table 1

Character	Value								
A	10	F	15	K	20	P	25	U	30
B	11	G	16	L	21	Q	26	V	31
C	12	H	17	M	22	R	27	W	32
D	13	I	18	N	23	S	28	X	33
E	14	J	19	O	24	T	29	Y	34
								Z	35

Example:

Identification number *without* check digit: IT0123456789AB

I T 0 1 2 3 4 5 6 7 8 9 A B

Step 1: 18 29 0 1 2 3 4 5 6 7 8 9 10 11

Step 2: 12 12 1 2 1 2 1 2 1 2 1 2 12 12 (*alternate multiplier*)

1 16 2 18 0 2 2 6 4 10 6 14 8 18 10 12

Step 3: 1+1+6+2+1+8+0+2+2+6+4+1+0+6+1+4+8+1+8+1+0+1+2= 66

Step 4: 70 - 66 = 4

Identification number *with* check digit IT0123456789AB4

¹ This formula is based on that applied to ISIN codes.